

United States v. General Motors Company
Prepared Remarks for U.S. Attorney Preet Bharara
September 17, 2015

Good afternoon. My name is Preet Bharara, and I am the United States Attorney for the Southern District of New York.

After an 18-month investigation, we are here this afternoon to announce the filing of criminal charges against General Motors Company related to the company's failure to disclose a safety defect from its regulator and from certain purchasers of its pre-owned cars. At the same time, this Office and GM have entered into a deferred prosecution agreement to resolve these charges.

As part of that agreement:

- GM has agreed to pay a \$900 million penalty or forfeiture.
- GM has agreed to the appointment of an independent federal monitor for a period of three years.
- And GM has made critical factual admissions.

The monitor will be tasked with ensuring that GM's public statements about safety are accurate and that information related to recalls is shared appropriately within the company.

The \$900 million penalty GM has agreed to pay is in addition to the hundreds of millions of dollars the Company has already agreed to pay out to families of victims through a victim compensation program established by the Company. That program has provided some measure of compensation for the tragic consequences of this safety defect.

Together with the penalty imposed by GM's regulator, its total financial payments now exceed \$1.5 billion and is going up.

The appointment of a federal monitor will ensure continued Government oversight, targeted at the issues that led to the tragedies that occurred here. In a case like this, a case about public safety and life and death, continued oversight is absolutely critical.

THE ISSUE

The resolution, as I said, includes detailed factual admissions by GM. The Statement of Fact details how GM designed an ignition switch for the Cobalt and other compact cars with such low torque that it could slip out of the "Run" position into "Accessory" or "Off" while the car was driving.

Cutting power to the engine also cut off power to the front airbags. So if the key slipped out of Run during a crash, the driver and front passenger could lose the protection of their airbags.

GM knew about this low torque ignition switch for a long time, from the early 2000s, shortly after it was first installed. But it didn't fix the problem back then, because GM personnel completely missed the connection between the switch and airbag non-deployment. They didn't then view the torque problem as a safety issue. In 2005, the Company even assured the public that it wasn't a safety issue.

Then, in 2012, they realized it was a safety issue. But they did not disclose it then.

GM's criminal non-disclosure of the safety defect lasted almost two years. Meanwhile, at least one person died in an accident related to the defective switch during that time period.

Our investigation of this matter began in February 2014, shortly after GM disclosed that certain of its older cars had a defective ignition switch that caused frontal airbags to fail to deploy during crashes. The Company acknowledged that the defect was connected with 13 deaths and many serious injuries. It has since acknowledged two more associated deaths.

EXPLANATION

As you can imagine, this has been a deeply difficult case, most especially for the families of the victims who died in GM cars. Deeply difficult. For us, it has been a challenging case – for the agencies, for the prosecutors, and for me. As part of our investigation, we reviewed hundreds of thousands of documents. We interviewed scores of witnesses.

But that's not why this case has been so challenging. It's been challenging (and difficult) because we've had to think long and hard about the appropriate resolution here. Paramount in our minds through every stage of the investigation has been the victims of the defective ignition switch. I met personally with families who lost loved ones in tragic accidents involving this switch. Those were some of the most searing and difficult moments of my six-plus years as U.S. Attorney.

With those victims in mind – and with a deep commitment to holding accountable those who caused such a profound tragedy – we have aggressively applied existing statutes in bringing criminal charges against GM.

One thing people should understand: There is actually no existing law specifically designed to impose criminal penalties for this kind of conduct – the non-disclosure of safety defects by a car company. There have been attempts at such a law, but those attempts have failed.

Even the TREAD Act, the law commonly understood as governing motor vehicle safety in this country, doesn't carry a criminal penalty in this situation, where a car company fails to disclose a safety defect domestically. [see fn. 2]

Given the lack of a particularized criminal statute, we have had to look to broader statutes of general application – namely, false statements and wire fraud.

In the end, we can only do what the law allows and what, in our best judgment, justice requires. Here, in our view, justice requires the filing of criminal charges. It requires detailed public admissions. It requires a significant financial penalty, well above what GM has paid and will pay out under its victim compensation program.

Above all, justice requires measures to make sure this doesn't happen again, which is why we have insisted upon factual admissions and the appointment of a federal monitor. This is not only about justice for certain families, but justice for the car-driving public going forward.

In this case, we have agreed to defer prosecution notwithstanding the bad conduct here for several reasons.

First, the deferred prosecution agreement we've entered into with GM includes detailed factual admissions and the Company's prompt agreement to appoint a monitor, which you don't get even after a conviction at trial, as I've mentioned.

Second, from the moment that top management came forward to disclose the defect in February 2014, the Company's cooperation and remediation have been fairly extraordinary.

- It conducted a swift and robust internal investigation. That doesn't always happen.
- It gave the prosecutors in my Office real-time updates about the findings of that internal investigation, often revealing to this Office what witnesses had said before GM management was even filled in. That doesn't always happen.
- GM got rid of a slew of employees; I believe there were 15, who were involved in the recall process that failed in this case. That almost never happens.

- And the company established a full and independent victim compensation program that has to date agreed to pay more than \$566 million, far in excess of what a court might have ordered and at far less cost to the victims. That has never happened.

That cooperation is the reason we are here after only 18 months, rather than four years or more.

To be clear, good behavior after the fact does not absolve GM or any company of responsibility.

But companies should be encouraged to act, as GM did here, to help the truth come out faster. To help victims' families get compensated faster. To weed out the bad actors faster. To do everything they can to make sure tragedies like those that unfolded in this case never happen again.

Now, with respect to this case, our investigation continues. I'm not necessarily saying charges will be brought or they won't be brought against any particular individual. We have made determinations as to some but not all.

What I can say is that there are challenges: We have to examine the role of an individual within the Company, the person's duties and responsibilities, the timing of his or her action or

inaction. Some people who had knowledge didn't make any disclosures. Some people who made disclosures didn't have any knowledge. In those circumstances, criminal intent can be hard to prove.

It's not always possible to bring a case. But I can say that if there is a case to bring, we will bring it, and no office has prosecuted more individuals for white collar crime than ours.

As for today's resolution, our unprecedented criminal cases in this area, the auto industry, have had a significant impact – as noted by some of the newspapers represented in this very room. Ask anyone at the Department of Transportation or in the transportation industry, and they will tell you that these cases have been a watershed. Because of these cases, there have been more recalls; more attention to safety; more transparency with regulators; and more focus on how to keep the driving public safe. This resolution furthers that effort.

Thank yous

I want to thank our federal partners in this case: the FBI, represented here today by Diego Rodriguez, the Assistant Director-in-Charge of the New York Field Office; the Department of Transportation's Office of the Inspector General, represented by its Principal Assistant Inspector General for Investigations Michelle T. McVicker; SIGTARP, represented by

Inspector General Christy Romero; and NHTSA, represented by its Deputy Administrator, Blair Anderson.

Finally, I want to thank the prosecutors in my office responsible for this case, Deputy Chief of the Criminal Division Bonnie Jonas, and Assistant U.S. Attorneys Sarah Eddy McCallum and Edward Imperatore.

- Diego Rodriguez, the Assistant Director-in-Charge of the New York Field Office;
- the Department of Transportation's Principal Assistant Inspector General for Investigations Michelle T. McVicker;
- SIGTARP Inspector General Christy Romero;
- NHTSA Deputy Administrator, Blair Anderson

Explanation of the \$900 Million:

This figure represents and quantifies the unfair brand boost that GM got by delaying the recall of cars in which the defective switch had been installed. GM sold more cars during the period of the crimes – spring 2012 to February 2014 – than it otherwise would have had it disclosed the defect in a timely fashion.